

## Statement

I, the undersigned Hervé LACHAUD, 36 rue Colbert, 92350 LE PLESSIS ROBINSON FRANCE, Head of Protection and Management of Intellectual Property (2I/PI) of the Department of Business Development and valuation (DCV) of the National Office of aerospace studies and Research (ONERA) since April 2, 2010 hereby declares

That this statement is made to be filed with a request for reconsideration of the decision issued by the U.S. Patent and Trademark Office (USPTO) September 5, 2012 in response to the request for restoration for lack unavoidable filed on April 18, 2012 U.S. Patent

Patent No.: U.S. 6577403 B1.

Issued: June 10 2003

Titel: Achromatic Interferometer OPTICAL WITH ADJUSTABLE Continuously sensitivity

Inventors: Jerome and Nicolas Primot GUERINEAU

Assignee: ONERA (Office National d'Etudes et de Recherches Aerospace), 29, Avenue de la Division Leclerc, CHÂTILLON 92320, FRANCE

Application No. 09/592. 963

Filed on: 13 June 2000

Under priority: FR 99.07804 June 17, 1999

### (i) Introduction:

The National Office for Aerospace Studies and Research (ONERA) is a French Public Establishment. ONERA is the proprietor of patent applications and patents in France and is assignee of patent applications and patents in the United States of America. For United States of America, ONERA entrusts French IP firms the procedures for issuing patents and for maintaining in force its patent applications and patents. ONERA is not involved in the selection of the corresponding US IP firms. This choice is made freely by the entrusted French IP firms.

ii) The willingness of the ONERA to maintain into force patent No. 6,577,403 by paying the first maintenance fee.

On 23 June 2003, the firm Martinet & Lapoux sent ONERA a letter informing it included U.S. Patent No. 6,577,403 in its register of monitoring maintenance fees indicating the three dates involved (ONERA DOCUMENT -ii1).

In June 2006, the firm Martinet & Lapoux sent ONERA an advice note concerning the patent maintenance fee. ONERA returned on July 3, 2006 the note with the instruction to pay the fee.

On October 23, 2006, the firm Martinet & Lapoux sent ONERA the invoice No. 06/006578 in the amount of € 1,639.27 stating that he had paid the fee in the United States of America [DOCUMENT ONERA-ii2]. ONERA has not kept the note issued in June 2006 since it received confirmation that Martinet & Lapoux had received it and properly took action. Thus, ONERA does not have a copy of the notice and it is for this reason that a question remains about the actual date of dispatch of this document.

ONERA then proceeded with the payment of the invoice, the delivery being made from his point of view. The agreement to pay this invoice was given by the accounting department of ONERA by signing a ticket on a batch of invoices whose total amounted to € 69,267.11 [ONERA-DOCUMENT ii3]. The issue of transfer slip indicates the amount of € 1,639.27 is for the firm Lapoux & Martinet [DOCUMENT ONERA-ii4] and that this transfer has been made by the bank of ONERA, Société Générale [DOCUMENT ONERA-ii5].

(iii) The willingness of ONERA to maintain into force patent No. 6,577,403 by paying the second maintenance fee.

On December 10, 2010, Gevers that took over in the meantime the activities of Martinet & Lapoux sent ONERA the invoice (debit note) No. 1093844 in the amount of € 2,221.00 [DOCUMENT ONERA-iii1]. ONERA was certain that the firm Gevers had performed correctly the payment of the second maintenance fee of U.S. Patent No. 6,577,403 and that it was still in force.

ONERA paid the invoice, delivery being made from his point of view. This invoice was grouped with two other bills of Gevers (1093617 and 1093618) on a slip of a total of € 3,121.00 [DOCUMENT ONERA-iii2]. The agreement to pay this invoice was given by the accounting department of ONERA. Page 3/24 taken from the edition of slip transfers from 01/01/2011 to 31/01/2011 indicates that the amount of € 3,121.00 is for the firm Gevers and that transfer has been completed by the bank of ONERA, Société Générale [DOCUMENT ONERA-iii3].

(iii) How and when ONERA knew that U.S. Patent No. 6,577,403 had lapsed for non-payment of the first maintenance fee:

ONERA is the assignee of a patent application No. 12/426, 994 filed Apr. 21, 2009 with the same inventor Jerome Primot. This U.S. patent application is pending at the USPTO. The U.S. examiner quoted on page 7 of the first communication dated 8 September 2011, U.S. Patent No. 6,577,403 as a prior art and considered the application non patentable [ONERA-DOCUMENT iii1].

For this U.S. patent application, the procedure has been entrusted to the IP firm NOVAGRAAF Technologies, 122, rue Edouard Vaillant, 92593 SANTA CLARA, CA, France.

The IP firm NOVAGRAAF sent ONERA. December 6, 2011, a six-page letter which analyzes the first communication (ONERA-DOCUMENT iii2). On page 3, the last sentence of the second paragraph states "This document D1 [U.S. 6,577,403] is no longer in force at the USPTO since 2007 due to non payment of the maintenance fee".

It is unexpectedly, that the ONERA became aware of the problem of non-payment of the first maintenance fee resulting in the expiry of patent No. U.S. 6,577,403.

The Friday, January 13, 2012, after consulting the registry "PAIR" portal Uspto.gov site that mentions the patent expired, I sent an email to IP firm Bloch & Gevers which was attached the screenshot of the corresponding page of the USPTO PAIR register (ONERA-DOCUMENT iii3). Daniel DAVID GEVERS cabinet has acknowledged January 16, 2012 (ONERA-DOCUMENT iii4).

I certify that all statements made on the basis of my own knowledge are true and these are made in good faith and the information contained herein are true. This statement was made knowing that any false declaration made intentionally is punishable by fine and imprisonment, or both, according to 18 USC § 1001 of the Code of the United States of America.

October 30, 2012.  
Hervé LACHAUD

pièces jointes : DOCUMENT ONERA-i1 à DOCUMENT ONERA-iii4.